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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,037	04/15/2004	Marion Grillot	040220.002	7388

34142 7590 08/24/2006

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EXAMINER

EARLY, MICHAEL JACOBY

ART UNIT

PAPER NUMBER

3744

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Art Unit: 3744

### **DETAILED ACTION**

The Advisory Action filed on 7/26/06 has been vacated and a new Office Action has been constructed and follows below.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

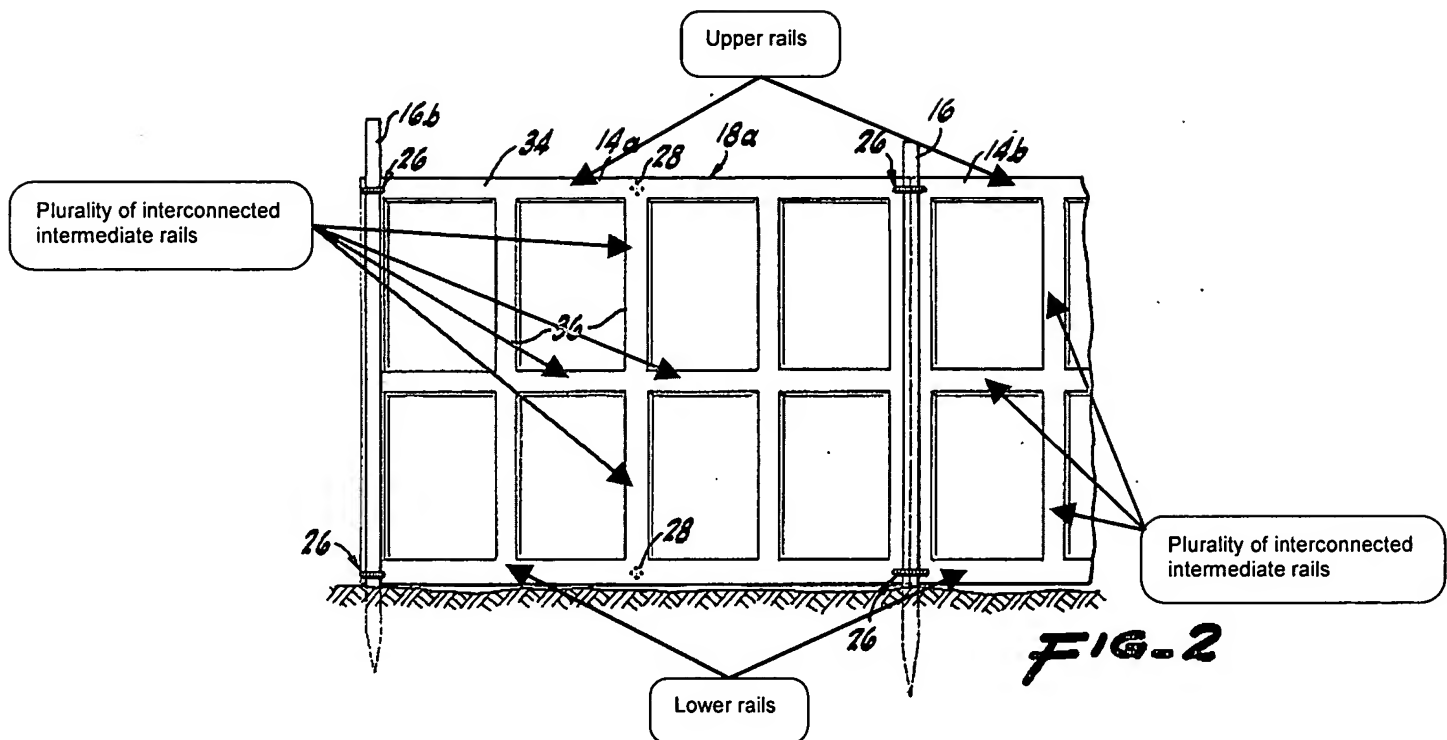
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias (U.S. 4,311,199) in view of Warnick et al. (U.S. 2004/0055590 A1) and in further view of McCallum (U.S. 4,126,116).

Elias discloses:

- at least one rigid safety panel (14 – modular rectangular panel) having a lower rail, an upper rail, and a plurality of interconnected intermediate rails (as seen in the illustration of Figure 2 below);
- a plurality of portable interlocking rigid safety panels (14a, 14b – modular rectangular panels; Figures 2, 6), each having a lower rail and an upper rail (as seen in the illustration of Figure 2 below).



Elias does not expressly disclose:

- a plurality of auxiliary supports;
- details related to the free area ratio of the frame;
- sidewall rails and details related thereto;
- a rigid top panel and details related thereto.

Warnick et al. teach of a campfire safety apparatus (10 – barbeque apparatus) that is comprised of a fire ring (12 – heat source container) and a rigid safety panel (16 – heat screen or shield), which is supported by a plurality of auxiliary supports (18 – radial arms) (see paragraph 0016; Figure 2).

Regarding claim 1, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Elias by incorporating a heat source container, a heat screen and radial arms extending therefrom between, as

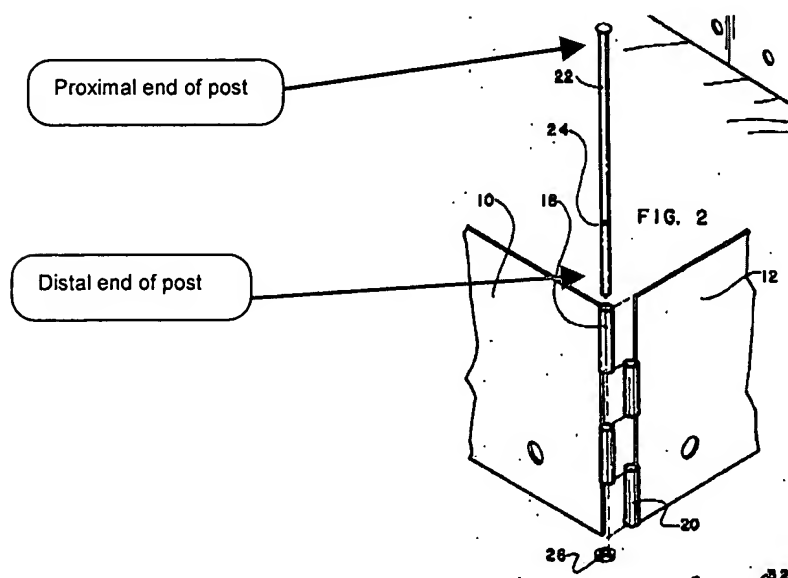
Art Unit: 3744

taught by Warnick et al., so that the campfire can be confined within a specific area and decrease the likelihood that a user will be burned by the fire.

Elias as modified by Warnick et al. do not expressly disclose:

- sidewall rails and details related thereto;
- a rigid top panel and details related thereto.

McCallum teaches of a portable barbecue device that is comprised of four panels that are hinged together by long posts, which are used to secure the apparatus to the ground (see Abstract). Further disclosed is that the rigid safety panel (10, 12, 14, 20 – panels) has pin receivers (18, 20 – mating hinge members) that are used in conjunction with pins (22 – posts), which are driven into the ground, to join the panels with one another (see col. 1, lines 22-37; Figures 1-3). Further disclosed is that the posts have proximal and distal ends (as seen in the illustration of Figure 2 below) McCallum further discloses that a rigid top panel (30, 32 – grill sections) having a perimeter rail is placed on top of the frame (as seen in Figure 1).



Art Unit: 3744

Regarding claims 1, 5 and 9, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias as modified by Warnick et al. by installing hinge members and posts and placing a grill across the top of the apparatus, as taught by McCallum, to secure the frame in place (see col. 1, lines 33-37) and prevent items from inadvertently falling onto the fire, respectively.

Regarding claims 2 and 3, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the safety panel's free area ratio at least fifty or eighty-five percent because the Applicant has not disclosed that having free area ratios of at least fifty or eighty-five percent provides an advantage, is used for a particular purpose, or solves a stated problem (see Specification, page 8, paragraphs 1 and 2). One of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with either the implicit free area ratios taught by Elias as modified by Warnick et al. and McCallum or the claimed fifty and eighty-five percent ratios because each free area ratio performs the same function providing a barrier around a fire.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias as modified by Warnick et al. and McCallum, in further view of Park (U.S. 2,173,024).

Elias as modified by Warnick et al. and McCallum do not expressly disclose:

- details related to an anchor or screw placed along the distal end of at least one pin.

Park teaches of a portable cooking utensil stand that is comprised of a pin (10 – post (10), which has a distal end (11 – lower end) that is adapted to be driven into the ground. Further disclosed is that an anchor or screw (12 – anchorage wing or fin) is placed upon the lower end of the post (see col. 2, lines 6-18; Figure 3).

Art Unit: 3744

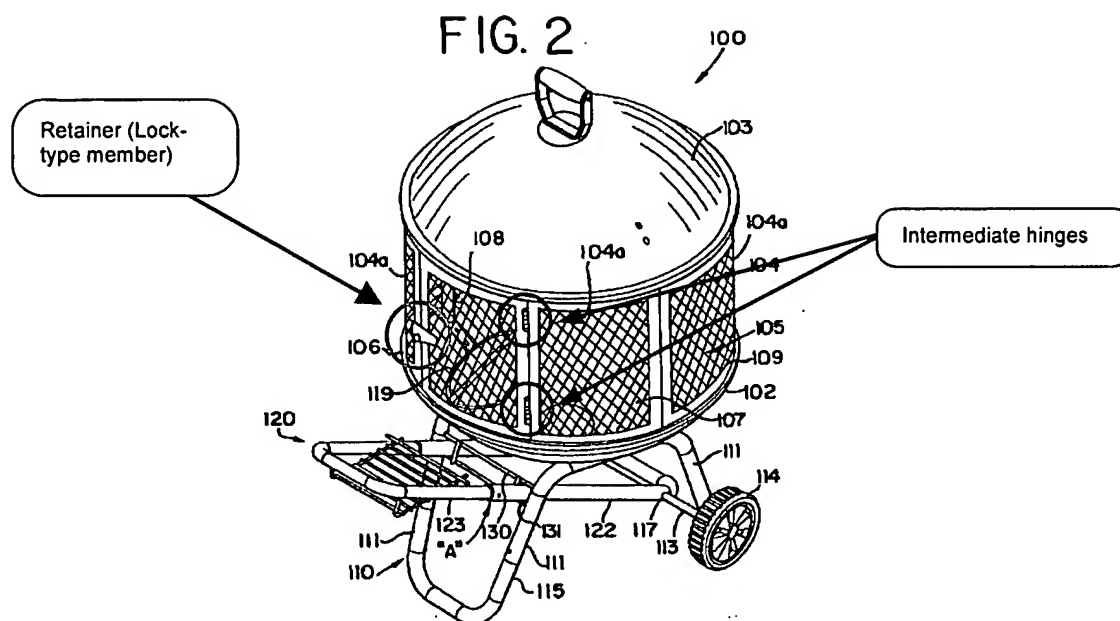
It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias as modified by Warnick et al. and McCallum by incorporating an anchorage wing or fin along the lower end of a post, as taught by Park, to prevent the apparatus from turning and lifting out of the ground (see col. 2, lines 13 – 18).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elias as modified by Warnick et al. and McCallum, in further view of Grady et al. (U.S. 6,220,240 B1).

Elias as modified by Warnick et al. and McCallum do not expressly disclose:

- details related to a panel that is rotatable about a hinge.

Grady et al. teach of an outdoor fireplace that is comprised of a fire chamber (105) that is enclosed within a rigid safety panel (104 – screen assembly), and upper and lower panel sections (108, 104a – hinged door, screen compartment; depending upon your point of view). Further disclosed is that the hinged door is rotatable upon intermediate hinges and may be secured shut via a retainer (lock-type member) (as seen in the illustration of Figure 2 below).



Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias as modified by Warnick et al. and McCallum by incorporating a hinged door that may be secured shut, as taught by Grady et al., to provide users the ability to gain access to the fire chamber without having to dismantle the apparatus (see col. 4, lines 25-29).

Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elias as modified by Warnick et al. and McCallum, in further view of Hering (U.S. 6,220,240 B1).

Elias as modified by Warnick et al. and McCallum do not expressly disclose:

- details related connection devices that are incorporated along the apparatus.

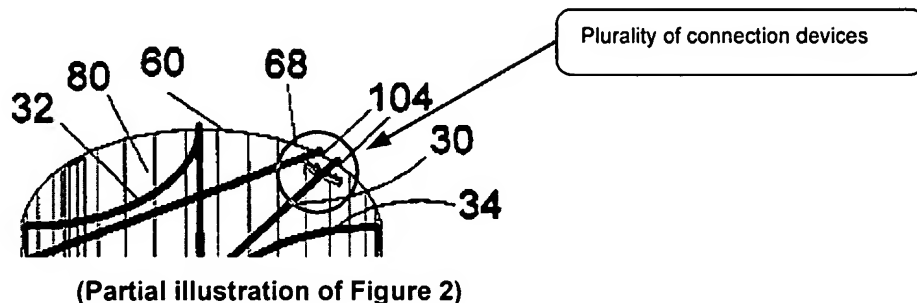
Hering teaches of a rigid safety panel (20 – forged fuel stove) that is comprised of a campfire accessory grill (28, 30 – two grill wires) that is positioned across the upper circular opening (80) of the stove and a plurality of connection devices (as seen in the



Art Unit: 3744

partial illustration of Figure 2 below). Further disclosed is that the grill wires are capable of supporting utensils (i.e. a spoon [35]) (see col. 6, lines 4-6; col. 7, lines 29-41; Figures 1, 2, 15).

## FIG. 2



Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias as modified by Warnick et al. and McCallum by incorporating grill wires along the apparatus, as taught by Hering, for the purpose of providing a location to store cooking utensils.

### **Response to Arguments**

Applicant's arguments, see Remarks, filed 5/9/06, with respect to claims 12-22 have been fully considered and are persuasive. The rejection of claims 12-22 has been withdrawn.

Applicant's arguments, with respect to the rejection(s) of claim(s) 1-10 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art reference(s) that teach of a plurality of auxiliary supports.

Art Unit: 3744

Applicant further argues that the second (final) Office Action, filed on 3/9/06, was premature. This argument is persuasive in reference to claims 13-22 because these were never amended; however, were rejected through the use of newly cited prior art. However, this argument is not persuasive in reference to claims 1-12. Although the Applicant states that claim 1 was only rewritten to include the language found in the dependent claim 4, this amendment inevitably changed the scope of claim 1 as well as all of the claims that were dependent upon it, which in turn, caused the Examiner to do further searching.

Applicant further argues that there is no basis for combining the prior art of Soseman with any of the remaining references. This argument is persuasive and thus the associated rejections have been rescinded.

#### **Allowable Subject Matter**

Claims 13-19 and 22 are allowed.

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3744

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJE  
8/21/06

Michael J. Early  
Patent Examiner  
Art Unit 3744



  
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